IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 313 of 2003

with
CIVIL APPLICATION NO. 7094 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

JATHALAL DAHYABHAI THAKKAR

Versus

HIRALAL CHANDULAL THAKOR(DECD.THRO' HIS LEGAL HEIRS)

Appearance:
1. Civil Revision Application No. 313 of 2003
MR ASHISH M DAGLI for Petitioner No. 1
..... for Respondent No. 1
MR HM PARIKH for Respondent No. 1/1-1/7

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. Both the ld. advocate request this Court to hear and dispose of this matter finally for which the Record and Proceedings also is called. Therefore, the matter was heard finally being disposed of accordingly.

2. This revision application is filed by the ori. tenant -defendant against an order and judgment delivered by the Appellate Bench of the Small Causes Court, at Ahmedabad, in Civil appeal No. 138/1999, whereby the appeal of present revisionist came to be dismissed with cost which was filed by him against the judgment and decree passed by Small Causes Court, Court No. 2, Ahmedabad, on 30.6.1999 ordering eviction of present petitioner - defendant on the ground of sec. 13(1)(g) of the Bombay Rent Act.

3. As per the brief facts of the case, at Isanpur Vatva Road, one house belonged to the present respondent is situated. In the said house, there are three shops on the ground floor. Out of these three shops, two shops were given on rent to the present petitioner and out of those two shops, possession of one of the two shops was obtained by the landlord from tenant through a decree of the court before filing of suit. Remaining shop i.e. shop no. 2 was given on lease for a monthly rent of Rs. 100/-. In the suit filed by the plaintiff i.e. HRP Suit No. 3056/1988, except the ground for the bonafide requirement of the landlord, other grounds of arrears of rent etc. were also set against tenant for eviction. However, both the courts negatived the other grounds and passed the decree of eviction on the ground of bonafide requirement of the plaintiff landlord and, therefore, in this revision application, we are concerned only with that ground. Originally, the suit was filed on the ground that elder son of the landlord was doing business of plastic articles and the suit shop no. 2 was required for his business. But, subsequently the plaint was amended and it was pleaded that the elder son Kalpesh of the landlord was separated from him and his younger son Hiren was doing the business of plastic articles in the said two shops adjoining to the suit shop no. 2, and his business was expanding rapidly and shop no. 2 was required for the expending business of his younger son Hiren. It was also stated that Hiren was married and plaintiff and his wife were residing with him. Both of them were maintained by his younger son Hiren. Day by day, the business of plastic articles of Hiren had been expanding and for the storage of goods, Hiren required the said shop no. 2 from the tenantpresent petitioner. It was further the case of the plaintiff that due to shortage of space, Hiren found difficulties and was

pstoring his goods in the residence of his relatives staying in neighbourhood. Goods were sometimes damaged, sometimes stolen also. It was also stated that the present petitioner - ori. defendant was not doing the business in the suit shop and kept the suit shop closed for last few years.

4. The tenant, vide filing written statement, denied the claim of the plaintiff about bonafide requirement as pleaded by the plaintiff. It was also stated by the defendant that he was doing milk business as well as business of channel supplying to the customers and the suit shop was not kept closed by him. It was stated that if decree is not passed, the landlord would acquire other premises, but, if the decree is passed, then he will have to suffer greater hardship and he would be without livelihood on account of closing of his business. He denied all the averments made in the plaint as well as amended plaint.

5. Ld. trial judge after recording the evidence came to the conclusion that the bonafide requirement of the landlord was proved by the landlord, while greater hardship could not be proved by the tenant and the ld. trial judge passed the decree of eviction on the ground which was challenged in the appeal which also resulted in dismissal. To prove the case from the side of plaintiff Hiralal Chandulal (now deceased through legal heirs), his son Hiren at ex. 68, their Accountant and witness one Mr. Anilbhai Balkrishna at ex. 94 were examined and one Bhikhabhai was also examined at ex. 93. Beside this ocular evidence, plaintiff also produced on record the documentary evidence in bulk, in shape of bills of purchase of goods, bills for selling materials, other statements of selling and purchasing plastic goods, assessments of sales tax and all these documents are from ex. 69 to 89. As against that, defendant- present petitioner has examined himself and his son Harshadkumar and produced on record electric bills in respect of the suit premises from ex. 98 to ex. 102 for the period during July & September, 1990, June, 1992, April 1993, June, 1998 and August, 1998. No other documentary evidence was produced on record by the tenant- present petitioner in the said suit.

6. The plaintiff and his son Hiren both deposed before the court that how the business of Hiren in plastic articles was flourishing and how they require shop no. 2 for storage of plastic goods. Witness Bhikhabhai in their support stated that Hiren used to store plastic material in his house, while witness

Anilkumar by further supporting the say of the plaintiff stated that defendant was not using the premises.

7. While defendant and his son Harshadkumar both stated that one out of two shops were obtained by the landlord from their possession. This is the only shop in which they were doing the business and the same was not closed at any time. They were doing business of milk in the said shop and also using the shop as office for the channel supplying business, installation of which was at their residence. The tenant and his son stated that if the decree is passed, their business will be closed and as against that, if the decree is not passed, landlord was already in possession of two shops and was ablve to obtain more spaceand he would not suffer greater hardship. From the above evidence, ld. trial judge came to the conclusion that suit premises was reasonably and bonafide required by the landlord for the business of his son Hiren and issue of hardship was decided against tenant. This conclusion was based on the evidence recorded as well as on documentary evidence. Ld. trial judge also came to the conclusion that the defendant would not suffer any hardship if the eviction decree was passed because the defendant - present petitioner failed to prove that he was doing any business in the suit premises for using the same for the business purpose since May, 1993. While not passing the eviction decree, present respondent - plaintiff was likely to suffer greater hardship. The findings were challenged as above said by the defendant. Even a ground was taken that he was doing business in the premises and that out of two shops, one shop was acquired by the landlord. On this issue, ld. appellate bench of the Small Causes Court, after hearing both the parties at length, came to the conclusion that the judgment of the trial court was read in detail and after hearing both the parties, the judgment in question was not required to be interfered with. The appellate bench concluded that it was proved on record that plaintiff requires the suit premises for business of his son though he was occupying two shops and yet was not able to store his goods for his business. Ld. appellate bench also approved the finding as to hardship of the ld. trial judge and hence, this revision application.

8. Ld. advocate Mr. AM Dagli on behalf of the petitioner vehemently urged that the decision of both the courts below are erroneous and not according to law. The stress which was placed by Mr. Dagli was on the fact that out of three shops, two shops were in possession of tenant and possession of one shop was taken by the

landlord from the tenant in pursuance of a decree. It was argued that from the evidence on record, it clearly appears that what is proved by the landlord was not reasonable bonafide requirement but mere desire to evict the tenant. Ld. advocate for the petitioner relied upon a decision of High Court of Calcutta in the matter of Naresh vs. Kanai Lal Roy Chowdhury, as reported in AIR 1952 Calcutta, 852. On the question of hardship, it was argued that tenant has submitted on record electric bills from ex. 98 to ex. 102 to prove user and is doing channel business in the suit premises as well as business of selling milk. Ld. advocate Mr. Dagli referred herein Civil Application No. 7094/2003 filed by him for additional evidence to show that tenant used said premises and requested to allow the said application for deciding the issue of hardship. Mr. Dagli also relied upon a decision of Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada, as reported in AIR 2003 SC 2713, wherein the Supreme Court has ruled that even if a bonafide requirement is proved, the eviction decree can be refused on the ground of comparative hardship. A stress was placed on para-11 wherein the Supreme Court observed that while considering the question of comparative hardship of the facts and circumstances of the case as well as a question whether other reasonable accommodation is available for the landlord or the tenant, should also be considered. It was argued that out of two shops, one shop is obtained by the landlord and, therefore, also comparative hardship of tenant would be greater in measure be resolved in favour of tenant. Ld. advocate also relied upon a decision of the Supreme Court in the matter of Kishanlal Laxminarayan Karava vs. Smt. Shalinibai, as reported in AIR 1991 SC 335, in respect of landlord having other accommodation. It was also argued that mere expansion of business is firstly not bonafide requirement on the part of the landlord where both the courts below erred in coming to the conclusion that issue of comparative hardship ought to have considered in favour of tenant. It was urged that this revision application be allowed and the judgments of both the courts below be quashed. It was also urged that Civil Application No. 7094/2003 filed for taking additional evidence be also allowed.

9. On the other hand, relying upon certain decisions, ld. advocate for the respondent Mr. Parikh argued that the requirement of the landlord was bonafide meaning thereby not tainted with any malafide. Evidence suggests that the business of the son of the landlord was expanding and therefore, there was a requirement. As against that, according to ld. advocate Mr. Parikh, the

tenant failed to adduce any evidence that the requirement of the landlord was not bonafide or reasonable. It was also argued that on the question of hardship where burden is heavily rest upon the tenant to establish greater hardship, tenant failed to even adduce sufficient evidence. It was argued that both the courts below on finding of fact on both the issues i.e. one on reasonable bonafide requirement of landlord and on comparative hardship, after appreciating the evidence, came to the conclusion to resolve the issues in favour of landlord and this finding of the fact cannot be interfered with in revisional powers unless it is shown by the petitioner that findings are not based upon the evidence on record and facts of the case and finding are so perverse that the same would cause great injustice. It was contended that interference by this Court in revisional jurisdiction on finding of facts by both the courts below was beyond the scope. Ultimately, it was urged to dismiss this revision application.

10. Having heard rival contentions and going through the record and proceedings of the case, true, it is that ordinarily finding of facts of both the courts below may not be interfered with in the revisional scope of the High Court, but, the submissions made by Mr. Parikh cannot be agreed to that in all cases, the finding of facts of the courts below cannot be interfered with. Once a revision petition is entertained by the High Court whichever be the party, invoking the revisional powers of this court, this Court acquires jurisdiction to call for and examining the records of the courts below for satisfying itself as to the legality of the order. The only limitation on the scope of the High Court's jurisdiction is that the order or proceedings sought to be scrutinised must be of subordinate court. There is no justification for limiting the scope of jurisdiction of the High Court by narrow reading of the provisions like sec. 29(2) of the Bombay Rent Act. Undoubtedly, the scope of revision under sec. 29(2) of the Bombay Rent Act is much wider than the scope of jurisdiction of the High Court under sec. 115 of Code of Civil Procedure. In proper cases, in revision under sec. 29(2) of the Bombay Rent Act, this High Court can interfere even on the finding of facts. Ld. advocate for respondent Mr. Parikh placed reliance on the decision of this Court in the matter of Shirill Babulal Shah vs. Legal Heirs and Rep. of Kusumben Wd/o Chhaganlal Shah, as reported in 2002(3) GLH 399, to substantiate his contention that this court cannot interfere with the findings of both the courts below. In the said decision, this court placed

reliance on a decision of Supreme Court in the matter of Bhaichand Ratanshi vs. Laxmishankar Tribhovan as reported in AIR 1980 SC 1690, wherein though Supreme Court observed that High Court has a wider jurisdiction than the one exercisable under Section 115 of C.P.C., but when exercising this jurisdiction if it is found by the High Court that finding of facts is manifestly perverse or erroneous, High Court can interfere with the finding of facts. Of course, the Supreme Court has observed that "hence, in a Suit for eviction for bona fide requirement when the lower courts had not failed to apply their mind to the requirements of Section 13(2) as to comparative hardship and their finding was not manifestly perverse nor erroneous the High Court could not substitute its own finding for the one reached by the lower Courts on a reappraisal of the evidence." Meaning thereby that even if the finding of facts by the courts below if found erroneous, the court is empowered to upset those findings in proper cases in addition to manifest perversity in the finding.

11. Now, considering the contention of both the parties and going through the evidence and records and proceedings, it clearly appears that none of the courts below committed any error in coming to the conclusion or findings are perverse. On evidence as recorded by the trial court as to expansion of business for the son of the landlord, both the courts below came to the conclusion that this necessity on the part of the landlord can be regarded as bonafide reasonable requirement. True, it is that under sec. 13(1)(g) of the Bombay Rent Act primarily landlord is required to establish that his need is not only bonafide but reasonable also. The plaintiff- landlord adduced voluminous evidence on record in shape of bills of purchase, sales tax assessment etc. to show that business of his son was expanding. Along with this, landlord also adduced evidence in shape of oral evidence of Accountant Anilbhai and one more witness Bhikhabhai about the difficulties experienced by landlord. Therefore, requirement of the landlord cannot be said a mere desire on the part of landlord only aimed at eviction of tenant and tainted with malafide. The requirement in the facts and circumstances of this case as has been established by the evidence cannot also be said to be unreasonable. At this juncture, the contention raised on behalf of the petitioner about the acquiring of the other shop by the landlord from the tenant is required to be discussed. Undoubtedly, this shop was acquired by the landlord before filing of the suit. Present suit came to be filed in 1988, thereafter,

in 1993 amendment was carried out. The case of the landlord, therefore, was even though out of two shops, one shop was obtained from the tenant, yet he was in necessity of space to store his material. It is necessary to take into account size of the shops which is 10' x 10'. With this issue, both the parties led their evidence and landlord led evidence that even though they are in possession of two shops they still require one more shop for storage of material. As against that, the tenant has failed to prove that the say of the landlord was not correct. Therefore, the requirement would not be unreasonable and malafide because out of two shops, possession of one shop was obtained before filing of the suit. Likewise, when there is heavy burden for the tenant to discharge that he would suffer greater hardship in the event of passing eviction decree, no such evidence could be produced by the defendant-tenant. True, it is that some bills for the use of electricity are produced by the tenant with his oral say that he is doing business in the said premises and had not closed the shop. As against this, the landlord led the oral evidence to suggest that for some period i.e. after 1992, the tenant had closed his business and shop was not used. To discharge the heavy burden about greater hardship specially with reference to closing of the business, oral evidence was found deficient by both the courts below as tendered by the tenant to establish that he was doing business in the suit shop and that he would suffer greater hardship. The tenant could have produced cogent best documentary evidence. Ultimately, both the courts below, on the point of comparative hardship, taken into account that shop was closed by the defendant and was not used, decided the question of hardship in favour of the landlord. These findings are entirely based on evidence on record and by no stretch of reasoning could be said to be manifestly perverse or error apparent committed by the courts below. Interference by this Court, therefore, is not necessary.

12. Civil Application No. 7094 of 2003 was directed to be heard together with the revision application. By this civil application, some zerox copies are placed on record by the petitioner with a prayer that the application be allowed because additional evidence which tenant proposes to produce goes to the root of the matter and the evidence are in such a nature that cannot be created afterwards. Both the ld. advocates for the parties were heard on this aspect.

13. If at all this application could be entertained, then the same can be entertained within the scope of Rule

27 of Order 41 of Code of Civil Procedure. The petitioner has failed to make out a case under Rule 27. The petitioner is concerned with clause (b) of Rule 27 wherein the appellate court is empowered to record additional evidence when evidence was such as could not found earlier and could not have been found by due diligence of the parties. Though ld. advocate Mr. Dagli attempted to invoke clause (c) of Rule 27 stating that these documents are necessary for just decision. In the matter of Lilaram Jamiatrai and others vs. Meghraj Hardasmal Kalwani and others, as reported in AIR 1972 Gujarat 66, it has been held that Order 41 Rule 27 which deals with the question of producing additional evidence cannot be invoked for the benefit of a party. Production of additional evidence of new and subsequent events under Rule 27 must be in pursuance of the requirement of the court and not because a party desirous to produce it for his own benefit. Only after two decrees came to be passed against the petitioner, petitioner in this revision application, now invoking Rule 27 to produce evidence to show that he was using the suit shop. The documents which are proposed to be produced are such which requires to be proved and could have produced at trial by the tenant with due diligence. If the application is allowed, then in support of the documents, oral evidence would be required to prove the documents, and, thereby for the tenant, it would be a fresh inning to begin and altogether a new case will come into existence. In this view of the matter, the party cannot be allowed to produce additional evidence in this manner and beyond scope of Rule 27 of Order 41. Ratio laid down by this Court in Lilaram Jamiatrai and others vs. Meghraj Hardasmal Kalwani and others (supra) leaves only option to reject the application. Therefore, this Civil Application will have to be dismissed.

14. In the result, this Civil Revision Application as well as Civil Application No. 7094/2003 both stand dismissed. No order as to costs. Interim relief granted by this Court on 8.12.2003 in the shape of ad interim relief and continued till today shall be continued for a further period of 10 weeks from today in case, the petitioner intends to approach the higher forum. This extension shall not be extended further in any case whatsoever.

(J.R. VORA, J.)

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